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EMINENT DOMAIN - KENTUCKY

Lexington-Fayette Urban County Government v. Moore

Supreme Court of Kentucky - November 1, 2018 - S.W.3d - 2018 WL 5732474

County brought condemnation action seeking a temporary construction easement and permanent drainage easement across portion of property owner's land. County filed a motion for interlocutory judgment.

After a hearing, in which owner asserted that county should have been required to take the property by fee simple, the Circuit Court entered an interlocutory order in favor of county. On appeal, the Court of Appeals held that Circuit Court erred in granting the judgment. The Supreme Court granted discretionary review.

The Supreme Court of Kentucky held that Court of Appeals failed to give appropriate deference to Circuit Court's finding that county negotiated in good faith before bringing condemnation action.

County negotiated in good faith for purchase of construction and drainage easements across owner's property prior to filing a condemnation action, and thus was entitled to interlocutory judgment on the issue of good faith, despite fact that county declined to consider fee simple ownership instead of an easement; county had a legal duty to pursue the taking of an interest less than fee simple ownership if doing so could achieve the public purpose of the taking and the Circuit Court credited the testimony of county's witness that federal and state funding sources were the primary factors in county's intent to obtain only an easement.

Caselaw rule that a condemning authority could not take, by power of eminent domain, a greater interest in land than was necessary for the purpose it sought to achieve applied to county's condemnation action for easements across portion of an owner's property, rather than fee simple ownership of that portion, where this rule accurately reflected the public policy implicit in the condemnation statute on which the rule was premised.